THE HEIRS OF M. K. HARRIS

IBLA 78-342 Decided July 31, 1979

Appeal from decision of Utah State Office, Bureau of Land Management, declaring lode mining claims null and void. (AD-30-78.)

Affirmed.

1. Administrative Procedure: Hearings – Mining Claims: Hearings – Mining Claims: Lands Subject to – Mining Claims: Withdrawn Land – Rules of Practice: Hearings

Two mining claims, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing. Such a result obtains despite reference to a location notice prior to the withdrawal where appellants do not make a showing of sufficient specific facts upon which to predicate a hearing, including which of the claims the previous location relates to, the boundaries thereof, whether the previous location was for a locatable mineral under a withdrawal order then in force, and the name of the previous locator.

APPEARANCES: George E. Mangan, Esq., Roosevelt, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GOSS

The Heirs of M. K. Harris appeal from a decision of the Utah State Office, Bureau of Land Management (BLM), dated February 27, 1978. That decision declared two lode mining claims of M. K. Harris null and void ab initio because the land on which the claims were located had been withdrawn from all but metalliferous mineral entry at the time of location by Exec. Order No. 5327 dated April 15, 1930 (Circular No. 1220, 53 L.D. 127), and from all mineral entry by PLO No. 4522 dated September 13, 1968.

On July 23, 1969, M. K. Harris located the M.K. No. 1 and M.K. No. 2 lode mining claims, stating on each of the notices of location that the date of discovery was "July 23." These mining claims were recorded in the Uintah County Recorder's Office on July 28, 1969.

In their appeal, appellants allege that the temporary withdrawal of land by Exec. Order 5327, dated April 15, 1930, did not prohibit "this Lode claim" and that "[t]he entry for this claim was on the 19th of September 1940. (See attached copy of Location Notice.)" No location notice was attached; neither is there any way of ascertaining to which of the two claims appellants referred. Appellants do not allege who made the 1940 entry, the boundaries thereof, nor whether it was made for metalliferous minerals. Appellants request an evidentiary hearing.

[1] A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. W. R. C. Croley, 32 IBLA 5 (1977); Charles R. Nielsen, 30 IBLA 235 (1977); Robert L. Beery, 83 I.D. 249, 25 IBLA 287 (1976); Leo J. Kottas, 73 I.D. 123, 127-128 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970). As to the location notices before the Board, the land in question was withdrawn from mineral entry by the President's Executive Order and the Secretary's order before the location of either of the claims.

A mining claim may be declared null and void ab initio without a hearing where no proof has been submitted which would show that the particular claim was located at a time when the land was subject to the mining laws. See United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971); Edward L. Macauley, 35 IBLA 202 (1978). Under Consolidated Mines a hearing is not required unless there is a dispute of fact. Where a previous location is alleged and a hearing is requested, it is incumbent upon a claimant to make a sufficient showing for the Department to determine whether there are specific facts in dispute. Otherwise, the expense of a hearing is not justified. Here appellants have failed to specify which of the claims the previous location relates to, the boundaries of the previous location, the name of the original locator, and whether the location was for a then locatable mineral. Appellants' showing falls short of the standard required, as it is not possible to ascertain what specific facts are in dispute. The location notices in the case record give a location date of July 23, 1969. They do not purport to be amendments or relocations of prior claims. Thus, they are properly declared void without a hearing, and the request for evidentiary hearing is denied. This decision is without prejudice to the claimants' establishing before BLM the validity of any claims located prior to the withdrawals and properly maintained under the law.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

I concur:

Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING IN THE RESULT:

The BLM decision properly declared the mining claims, located and recorded in July 1969, null and void.

On appeal appellants allege that "the entry for this claim was on the 19th of September 1940. (See attached Copy of Location Notice.)" None was attached 1/ and it is not clear whether this reference applies to the M.K. No. 1 or M.K. No. 2 mining claim.

Assuming the quotation applies to a particular mining claim in issue and the claim was initiated 2/ in 1940 for metalliferous minerals (see 43 U.S.C. § 142 (1970)), the Executive Order would not have precluded its existence.

I concur in the result rendered in the main decision because of the paucity of data offered by appellant, which data is insufficient to predicate firm and reasoned findings along the lines indicated above.

Frederick Fishman
Administrative Judge

1/ I believe it would have been more appropriate to call upon appellant to submit a new copy of his attachment rather than ruling on the merits at this time.

2/ The claim could have been created by its being held and worked since 1940 "for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated. . . ." 30 U.S.C. § 38 (1976).